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E-filing

ORIGINAL
FILED
JAN 14 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Attorneys for Defendant
AYURVEDIC ACADEMY INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VAIJAYANTI APTE, Plaintiff, v. AYURVEDIC ACADEMY INC. d/b/a KERALA AYURVEDA ACADEMY and DOES 1-5, Defendants.	Case No. C11-00222 **NOTICE OF REMOVAL** JCS ADR

TO: The Clerk of the Court;

AND TO: Doug Colt and Thomas E. Wallerstein, counsel for Plaintiff;

AND TO: The Clerk of the San Mateo County Superior Court.

PLEASE TAKE NOTICE that Defendant AYURVEDIC ACADEMY INC. d/b/a KERALA AYURVEDA ACADEMY ("Defendant") hereby exercises its rights pursuant to Title 28 U.S.C. § 1441, et seq., to remove this action from the Superior Court in the State of California in and for the County of San Mateo (Case No. CV501205), to the United States District Court for the Northern District of California.

GROUNDS FOR REMOVAL

This Court has original jurisdiction of this civil action because (i) the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and (ii)

COPY

the action is between citizens of different states. The plaintiff alleges in her complaint that she is a resident of California and that the defendant is a Washington corporation with its principal place of business in Washington. (Complaint at ¶¶ 1-2.) The plaintiff's claim includes an allegation that:

> "Kerala breached the Agreement on March 1, 2009 when it failed to timely make the payment due to Plaintiff under the Agreement. It again materially breached the Agreement when it failed to pay in full the 2010 payment by March 1, 2010. Plaintiff is informed and believes that Kerala will not make any future payments . . . . Plaintiff has been damaged in the amount of monies which are unpaid . . . and any monies and interest which are due and owing in the future but are unpaid."

(Complaint ¶ 8.) According to the agreement plaintiff attached to her complaint, those alleged payment obligations total $170,000. (Complaint, Ex. A.)

Accordingly, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. Removal is therefore proper pursuant to 28 U.S.C. § 1441.

This notice of removal has been filed within thirty (30) days of the defendant's receipt of a copy of the initial pleading setting forth the claim for relief upon which this action is based. All defendants consent to this removal.

The defendant is entitled to remove this case to the United States District Court for the Northern District of California. A copy of all process, pleadings, and orders served upon the defendants in the state court proceeding is attached as Exhibit A hereto.

Dated this 14th day of January, 2011.

Respectfully Submitted,

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

By: [signature]

Derek A. Newman, State Bar No. 190467
derek@newmanlaw.com
Derek Linke (*pro hac vice* to be filed)
linke@newmanlaw.com

Attorneys for Plaintiff
AYURVEDIC ACADEMY INC.

EXHIBIT - A

COPY SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED FILED
SAN MATEO COUNTY

DEC 0 3 2010

Clerk of the Superior Court
By T. Judd
DEPUTY CLERK

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Ayurvedic Academy Inc. d/b/a Kerala Ayurveda Academy and Does 1 - 5

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Vaijayanti Apte

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
Southern Branch
400 County Center, Redwood City, CA 94063

CASE NUMBER:
(Número del Caso):
CIV 501205

BY FAX

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Doug Colt (Bar # 210915) Fax No.: (650) 472-8078
Colt Wallerstein LLP, Three Lagoon Drive, Redwood Shores, CA 94065 Phone No.: (650) 453-1980

DATE: *(Fecha)* DEC 0 3 2010 JOHN C. FITTON Clerk, by *(Secretario)* T. JUDD, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☒ on behalf of *(specify)*: Ayurvedic Academy Inc. d/b/a Kerala Ayurveda Academy

under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Doug Colt (State Bar # 210915) / Kimberly Culp (State Bar #238839) Colt Wallerstein LLP Three Lagoon Drive Redwood Shores, CA 94065 TELEPHONE NO.: (650) 453-1980 FAX NO.: (650) 472-8078 ATTORNEY FOR (Name): Vaijayanti Apte, Plaintiff	COPY RECEIVED DEC 03 2010 CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City 94063 BRANCH NAME: Southern Branch	
CASE NAME: Apte v. Ayurvedic Academy Inc.	

CIVIL CASE COVER SHEET

[X] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation: [ ] Counter [ ] Joinder — Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CIV 501205

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

BY FAX

1. Check one box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [X] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint (not specified above) (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition (not specified above) (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   - a. [ ] Large number of separately represented parties
   - b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   - c. [ ] Substantial amount of documentary evidence
   - d. [ ] Large number of witnesses
   - e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   - f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (*check all that apply*): a. [X] monetary b. [ ] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action (*specify*): TWO (2)
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: December 3, 2010

Kimberly Culp
(TYPE OR PRINT NAME)

▶ [signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice– Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

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ENDORSED FILED
SAN MATEO COUNTY
DEC 03 2010
Clerk of the Superior Court
By T. Judd
DEPUTY CLERK

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

VAIJAYANTI APTE, Plaintiff, v. AYURVEDIC ACADEMY INC. d/b/a/ KERALA AYURVEDA ACADEMY and DOES 1-5, Defendants.	CASE NO. CIV 501205 COMPLAINT FOR DAMAGES 1. BREACH OF WRITTEN CONTRACT 2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

BY FAX

PARTIES

1. Plaintiff Vaijayanti Apte is a natural person whose principal place of residence is in Los Gatos, California. Until on or about December 11, 2007, Plaintiff was the sole proprietor of Ayurveda Institute of America (the "Business"), at which point she sold certain assets of the Business through an Intangible Asset Purchase Agreement (the "Agreement"). The Business was located in Foster City, California. The Agreement was negotiated in Foster City, entered into in Foster City, and performance was to be made in Foster City.

2. Defendant Ayurvedic Academy Inc. d/b/a Kerala Ayurveda Academy ("Kerala") is a Washington corporation with its principal place of business in Seattle, Washington. Kerala acquired certain assets of the Business through the Agreement.

3. The true names and capacities, whether individual, corporate, associate or otherwise, and the true involvement of defendants sued herein as DOES 1 through 5, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names and will amend this Complaint to show the true names, capacities and involvement when ascertained. Plaintiff is informed and believes and thereon alleges that each of the defendants designated as a DOE is responsible in some manner for the events and happenings herein referred to, and that Plaintiff's injuries and damages as hereinafter set forth were proximately caused by said defendants.

JURISDICTION AND VENUE

4. Jurisdiction of this Court is founded upon Code of Civil Procedure section 410.10.

5. Venue is proper in San Mateo County pursuant to Code of Civil Procedure section 395.5. A substantial part of the events, acts, omissions and transactions complained of herein occurred in San Mateo County.

BACKGROUND FACTS

6. On or about December 11, 2007, Plaintiff and Kerala entered into the Agreement, a true and correct copy of which is attached hereto as **Exhibit 1.**

7. Through the Agreement, Plaintiff promised to transfer certain Intangible Assets, Licenses, and Authorizations, all as defined in the Agreement, to Kerala. In exchange for which, Kerala promised to make yearly payments to Plaintiff for a period of 5 years. As part of the

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agreement, Kerala represented that it had and "will have available sufficient funds to enable it to consummate the transactions contemplated by [the] Agreement." Plaintiff transferred all agreed-upon Intangible Assets to Kerala. Summarily, through the Agreement, Kerala acquired:

a. Plaintiff's Ayurveda clinic in Foster City, which Kerala was going to own and run in Foster City under the name Kerala Ayurveda Clinics;

b. Ayurveda Institute of America, owned by Plaintiff, with classes in various locations throughout the United States.

8. Kerala first materially breached the Agreement on March 1, 2009 when it failed to timely make the payment due to Plaintiff under the Agreement. It again materially breached the Agreement when it failed to pay in full the 2010 payment by March 1, 2010. Plaintiff is informed and believes that Kerala will not make any future payments, though it intends to retain the transferred Intangible Assets. Plaintiff has been damaged in the amount of monies which are unpaid, and interest thereon, and any monies and interest which are due and owing in the future but are unpaid.

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FIRST CAUSE OF ACTION
(BREACH OF INTANGIBLE ASSET PURCHASE AGREEMENT)

9. Plaintiff hereby incorporates by reference paragraphs 1-9 as though fully set forth herein.

10. Plaintiff and defendants entered into a written Intangible Asset Purchase Agreement described above, by which Plaintiff agreed to transfer certain intellectual property in exchange for agreed-upon terms.

11. Plaintiff performed all conditions, covenants, and promises to be performed on her part with regard to the Intangible Asset Purchase Agreement or was legally excused from the performance of such conditions, covenants or promises.

12. Defendant breached the Intangible Asset Purchase Agreement with Plaintiff.

13. As a result of the breaches, Plaintiff suffered economic losses of at least $189,000, or an amount subject to proof at trial, and other general, consequential, and specific damages.

Wherefore, Plaintiff prays for relief as set forth below.

///

SECOND CAUSE OF ACTION
(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

14. Plaintiff hereby incorporates by reference paragraphs 1-9 as though fully set forth herein.

15. Implied in the Intangible Asset Purchase Agreement, described above, was a covenant of good faith and fair dealing. The covenant of good faith and fair dealing obligated Kerala to perform the terms and conditions of the contracts fairly and in good faith, to refrain from doing any act that would prevent or impede Plaintiff from performing any or all conditions of the contract that she agreed to perform, or to engage in any acts that would deprive Plaintiff of the benefits of the contract.

16. Plaintiff performed all conditions, covenants, and promises to be performed on her part with regard to the Intangible Asset Purchase Agreement or was legally excused from the performance of such conditions, covenants or promises.

17. Kerala knew Plaintiff had fulfilled all her duties and conditions under the Intangible Asset Purchase Agreement.

18. Kerala breached the implied covenant of good faith and fair dealing under the Intangible Asset Purchase Agreement by engaging in the conduct complained of herein.

19. As a result of Kerala's bad-faith conduct toward Plaintiff and breach of the implied covenant of good faith and fair dealing, Plaintiff has suffered economic losses and other general, consequential and specific damages, according to proof.

WHEREFORE, plaintiff prays for relief as set forth below.

PRAYER

WHEREFORE, plaintiff prays for judgment as follows:

1. That the Court declare, adjudge, and decree that defendants breached the written contract with Plaintiff.

2. That the Court award damages to Plaintiff in an amount to be determined at trial.

3. That the Court award pre-judgment interest in an amount to be determined at trial.

4. That the Court award to Plaintiff her attorneys' fees and costs of suit.

colt/wallerstein

5. That the Court grant such other relief as it deems proper.

Date: December 3, 2010

Respectfully submitted,

COLT / WALLERSTEIN LLP

By:____________________
Doug Colt
Thomas E. Wallerstein
Attorneys for PLAINTIFF

colt/wallerstein

EXHIBIT 1

KERALA ayurveda™

INTANGIBLE ASSET PURCHASE AGREEMENT

THIS INTANGIBLE ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of this 11th day of December 2007, by and between, Ayurveda Institute of America, a sole proprietorship company of Dr Vaijayanti Apte (hereinafter referred to as "Seller"), and Ayurvedic Academy Inc. (d/b/a Kerala Ayurveda Academy), a Washington corporation (hereinafter referred to as "Buyer").

RECITALS

A. Seller is engaged in the business of managing clinics, wellness centers and teaching and promoting the practice of Ayurveda in the United States (the "Business").

B. Seller desires to sell to Buyer certain assets used in the Business, and Buyer desires to purchase the same, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, and subject to the conditions hereinafter set forth, Seller and Buyer hereby agree as follows:

1. Definitions: For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below, unless the context clearly indicates otherwise.

1.1 *"Agreement"* means this Intangible Asset Purchase Agreement.

1.2 *"Buyer"* is defined in the first paragraph of this Agreement.

1.3 *"Business"* is defined in the Recitals above.

1.4 *"Closing"* means the closing of the purchase and sale of the Assets in accordance with this Agreement.

1.5 *"Closing Date"* means the date specified in Section 3.1 on which the Closing will take place.

1.6 *"Intangible Assets"* as defined in Exhibit 1, including identified business agreements, customer lists and contacts, customer contracts and commitments, including all renewals, extensions and modifications thereof; goodwill; and intellectual property rights, *i.e.* all trade names (including "Ayurveda Institute of America"), trademarks and the goodwill appurtenant thereto, trademark applications, patents, patent applications, copyrighted works and similar intangible rights.

1.7 *"Licenses and Authorizations"* means all licenses, permits, and authorizations issued by government agencies necessary to the ownership and operation of any of the Purchased Assets or the Business, all as more particularly described on Exhibit 2.

1.8 *"Purchase Price"* means the price specified in Section 2.2 hereof to be paid by Buyer to Seller at Closing.

1.9 *"Purchased Assets"* means the assets of Sellers to be purchased by Buyer pursuant to this Agreement, consisting of the identified and defined (i) Intangible Assets, and (ii) Licenses and Authorizations,.

1.10 *"Seller"* is defined in the first paragraph of this Agreement.

2. Purchase and Sale of Assets:

2.1 *Sale of Assets.* On the Closing Date, Seller shall sell, convey assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all of Seller's right, title and interest in and to the Purchased Assets.

2.2 *Purchase Price and Method of Payment.* At Closing, the Buyer shall pay to the Seller the following sums within 60 days of completion of each year from the date of signing this Agreement:
Year 1: US$ Thirty five thousand (US$ 35,000)
Year 2: US$ Forty five thousand (US$ 45,000)
Year 3: US$ Fifty thousand (US$ 50,000)
Year 4: US$ Sixty thousand (US$ 60,000)
Year 5: US$ Sixty thousand (US$ 60,000)
This Payment Schedule shall be discontinued if Dr Vaijayanti Apte terminates her Employment Agreement with the Buyer.

2.3 *Delivery of Assets.* Buyer shall take delivery of all Purchased Assets at Closing. Prior to Closing, representatives of Seller and Buyer shall jointly take an inventory of the Intangible Assets, Licenses and Authorizations, and verify, by initialing a copy of Exhibits 1 & 2, that all these listed therein are accounted for. The parties shall follow such mutually acceptable procedures as they shall deem necessary to ensure that, following completion of the inventory, all items listed as Exhibits 1 and 2 are in fact delivered to Buyer at Closing.

3. Closing:

3.1 *Closing.* The Closing of the purchase and sale contemplated by this Agreement (the "Closing") shall take place within ten (10) days of signing this Agreement (the "Closing Date"), at the offices of an authorized signatory of Kerala Ayurveda Academy or at such other time or place as shall be agreed by the parties in writing; provided, however, that all conditions to the Closing herein set forth shall have been satisfied.

3.2 *Prorations.* All income and expenses attributable thereto through the close of business on the day preceding the Closing Date shall be for the account of Seller. Thereafter, the operation of the Business and all income and expenses attributable thereto shall be for the account of Buyer.

3.3 *Transfer Taxes, Etc.* To the extent applicable, any transfer taxes due as a result of the purchase and sale of Assets contemplated hereby shall be paid entirely by Seller, and Seller shall indemnify and hold Buyer harmless therefrom.

3.4 *Costs and Expenses.* Except as otherwise provided in Sections 3.2 and 3.3, each party shall separately bear the costs and expenses incurred by it in connection with this Agreement and the transactions contemplated hereby; provided, however, that if any party shall commence legal action to specifically enforce or otherwise seek redress under, or for breach of, this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees incurred to prosecute or defend the action, including costs and fees incurred in any appellate proceeding.

3.5 *Performance by Seller at Closing.* At Closing, Seller shall deliver to Buyer the following:

(a) A Bill of Sale and all other appropriate documents and instruments in customary form and substance sufficient to transfer to Buyer all of Seller's right, title and interest in and to all intangible assets that are a part of the Assets, free and clear of any liens, pledges, privileges, charges, claims and encumbrances any kind whatsoever.

(b) An Assignment and Assumption undertaking sufficient to convey to Buyer all right, title and interest of Seller in and to the Purchased Assets.

(c) A certificate of Seller to the effect that all warranties and representations of Seller herein are true and correct as of the Closing Date.

(d) All other instruments and documents that Buyer shall reasonably deem to be necessary to fulfill any obligation required to be fulfilled by Seller on the Closing Date, and to evidence satisfaction of any conditions to Closing referred to in Section 7.2 hereof.

3.6 *Performance by Buyer at Closing*. At Closing, Buyer shall deliver to Seller the following:

(a) A statement certifying receipt of all items listed in Exhibits 1 and 2

(b) All other instruments and documents that Seller, shall reasonably deem to be necessary to fulfill any obligation required to be fulfilled by Buyer on the Closing Date, and to evidence satisfaction of any conditions to Closing referred to in Section 7.2 hereof.

3.7 *Approval of Documents*. Unless otherwise provided herein, all instruments and documents delivered pursuant to this Agreement shall be dated as of the Closing Date, and shall be satisfactory to the parties and to their respective counsel as to form and content.

4. Representations and Warranties of Seller: Seller represents and warrants to Buyer that the following statements are true and correct on the date hereof, and will be true and correct on the Closing Date as though made on such date:

4.1 *Authorization, Binding Effect, and No Conflicts*. This Agreement has been duly and validly executed and delivered by Seller and constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms, subject to (i) applicable bankruptcy, insolvency or other similar laws relating to creditors' rights generally, and (ii) general principles of equity. The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby will not violate any provision of law, rule or regulation to which Seller is subject, violate any order, judgment or decree applicable to Seller, or conflict with, or result in a breach or default under, any agreement or other instrument to which Seller is a party or by which Seller may be bound; except, in each case, for violations, conflicts, breaches or defaults which in the aggregate would not materially hinder or impair the consummation of the transactions contemplated hereby.

4.3 *Consents and Approvals*. Neither the execution of this Agreement nor the consummation of the sale of the Assets requires the approval or consent of any governmental authority having jurisdiction over the business of Seller nor of any party to any agreement with Seller.

4.4 *Business Agreements*. The identified Business Agreements listed on Exhibit 1 hereto constitute valid and binding obligations of Seller and are in full force and effect as of the date of this Agreement and, with the exception of those Business Agreements which will have been completed prior to the Closing Date according to their terms, will on the Closing Date constitute valid and binding obligations of Seller and be in full force and effect. Neither Seller nor any other party to such Business Agreements is in material default under any such agreements.

4.5 *Intellectual Property Rights*. Seller owns or has the right pursuant to license, sublicense, agreement or permission to use all intellectual property rights necessary for the operation of the Business as presently conducted and as presently proposed to be conducted. Seller has taken all reasonable action to protect each item of intellectual property that it owns or uses. To Seller's knowledge, Seller is not infringing upon, misappropriating, violating or otherwise acting adversely to the right of any other person under, or in respect to, any trade names, trademarks, patents, copyrights, personality rights or similar intangible rights, and the Seller has not received any charge, complaint, claim or notice of such an infringement, misappropriation, violation or adverse act. To the knowledge of the Seller, and the directors and officers of Seller, no third party has infringed upon, misappropriated, violated or otherwise acted adversely to the intellectual property rights.

4.8 *Licenses and Authorizations.* On the date hereof, the identified Licenses and Authorizations set forth in Exhibit 2 hereto are in full force and effect, and, to the knowledge of Seller, constitute all licenses, permits and authorizations from regulatory bodies which are required for the ownership and operation of the Purchased Assets and the Business.

4.9 *Litigation.* There are no actions, suits, claims, proceedings or investigations pending or, to the knowledge of Seller, threatened against Seller that would affect Seller's title or interest in any of the Purchased Assets. Seller has received no notice, and has no knowledge, that it is in default of any order, writ, injunction or decree of any court or federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality with respect to the ownership and operation of the Assets. To the best knowledge of Seller, Seller has complied in all material respects with all laws, regulations, franchises, licenses and orders applicable to the Assets.

4.10 *Insurance.* There is presently in force extended coverage casualty and liability insurance in respect to the Purchased Assets to be transferred and conveyed hereunder, and Seller will maintain or cause such insurance to be maintained in full force and effect until Closing. Seller has provided Buyer with copies of such policies and will cooperate with Buyer, if so requested, in arranging for transfer of insurance at Closing.

4.11 *Employee Agreements.* There are no collective bargaining agreements and no deferred compensation or profit-sharing plans or arrangements presently in force, or any other agreement with employees that would affect the transfer of Purchased Assets contemplated by this Agreement or requires Buyer to continue any employment or compensation arrangement with any person. Seller has no commitment to enter into any such agreements, or establish any such plans or arrangements, nor will it do so while this Agreement is in effect.

4.12 *Disclosure.* Neither this Agreement nor any of the Schedules or Exhibits annexed hereto contains any untrue statement of any material fact, or omits to state any material fact required to be stated in order to make the statements contained herein or therein not misleading.

4.13 *Compliance With Laws.* To Seller's knowledge, Seller is in compliance with all laws, rules, regulations and orders applicable to the Business (including, without limitation, those relating to environmental protection, occupational safety and health and equal opportunity employment practices), except where the failure to comply therewith does not have a material adverse effect on the financial condition of the Business.

5. Representations and Warranties of Buyer: Buyer represents and warrants to Seller that the following statements are true and correct on the date hereof and will be true and correct on the Closing Date as though made on such date:

5.1 *Organization, Corporate Power and Authority.* Buyer is a corporation duly organized, validly existing and in good standing under the laws of Washington, and has the requisite corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

5.2 *Authorization, Binding Effect and No Conflicts.* This Agreement has been duly and validly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable in accordance with its terms, subject to (i) applicable bankruptcy, insolvency or other similar laws relating to creditors' rights generally, and (ii) general principles of equity. The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby will not violate any provision of law, rule or regulation to which Seller is subject, violate any order, judgment or decree applicable to Seller, or conflict with, or result in a breach or default under, any term or condition of the Articles of Incorporation or the Bylaws of Seller, or any agreement or other instrument to which Seller is a party or by which Seller may be bound; except in each case, for violations, conflicts, breaches or defaults which in the aggregate would not materially hinder or impair the consummation of the transactions contemplated hereby.

5.3 *Consents and Approvals.* Neither the execution of this Agreement nor the consummation of the sale of the Assets requires the approval or consent of any governmental authority having jurisdiction over the business of Buyer nor of any party to any agreement with Buyer.

5.4 *Availability of Funds.* Buyer has available and will have available sufficient funds to enable it to consummate the transactions contemplated by this Agreement.

5.5 *Litigation.* There are no actions, suits, claims, proceedings or investigations pending or, to the knowledge of Buyer, threatened against Buyer that would affect Buyer's ability to perform under this Agreement.

6. Covenants of Seller:

6.1 *Operation of the Business.* Between the date of this Agreement and the Closing Date, except as contemplated by this Agreement, Seller will not, without the prior written consent of Buyer:

(a) Sell, assign, lease or otherwise transfer or dispose of any of the identified Intangible Assets, whether now owned or hereafter acquired.

(b) Cancel any customer or agency relationship, except in the usual and ordinary course of business; renegotiate, modify, amend or terminate any Business Agreement listed on Exhibit 1 or fail to comply with all of the terms and conditions of said Business Agreements and all Licenses and Authorizations.

6.2 *Covenant Not to Compete.* For a period of two (2) years following the last payment made as per Section 2.2, or for so long as Buyer is engaged in the Business, whichever is shorter, Seller shall not engage, whether directly or indirectly and whether or not for compensation, in any business or activity similar to the Business within 10 miles of the current location of the Business, without the written consent of Buyer. During this period, Seller shall not solicit the employment of any person, directly or indirectly, individually or on behalf of any third party, solicit the employment of any person who is at the time of the solicitation, or was at any time during the four (4) months prior to the solicitation, an employee of the Buyer. The Seller will also not solicit the business of any person or entity who was a customer of the Buyer during this period for purposes of selling to such customer products or services which compete with, or which are similar to, the products or services provided by the Buyer. The obligation of Seller described in the preceding sentence to refrain from engaging in the Business includes the obligation to refrain from participating as a partner or as a holder of any beneficial interest in any entity or activity engaged in the Business. Because the amount of damage which Buyer will suffer may be difficult or impossible to calculate (but may nevertheless be substantial) if Seller fails to observe this covenant not to compete, Buyer shall be entitled to injunctive relief or specific performance in the event of a breach of this covenant. The remedies provided Buyer by this Section 6.2, shall be in addition to any other remedies that may be available to Buyer in law or equity. Notwithstanding the foregoing, the parties agree that nothing herein shall prevent Seller from engaging in the business of producing and/or marketing food products prepared in accordance with, and marketed as, Ayurevedic principles.

7. Conditions Precedent to Closing:

7.1 *Seller's Performance.* The obligation of Seller to close on the Closing Date is subject to the fulfillment at or prior to such date of each of the following conditions (any one or more of which may be waived in whole or in part by Seller in writing):

(a) The representations and warranties of Buyer contained herein shall be true and correct in all material respects on the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date.

(b) Buyer shall have performed and complied with all material terms', covenants and conditions of this Agreement that are required to be performed or complied with by it on or before the Closing Date.

(c) No action, investigation, or proceeding shall have been instituted or threatened that would adversely affect the ability of Buyer to comply with the provisions of this Agreement.

(d) All actions, proceedings, instruments, signatures of Buyer, and documents required to execute this Agreement or incident thereto shall have been approved by counsel for Seller. Such approval shall not be unreasonably withheld.

(e) All governmental and other consents and approvals, if any, necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

7.2 *Buyer's Performance.* The obligations of Buyer to close hereunder on the Closing Date are subject to the fulfillment at or prior such date of each of the following conditions (any one or more of which may be waived in whole or in part by it in writing):

(a) The representations and warranties of Seller contained herein shall be true and correct in all material respects on the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date.

(b) Seller shall have performed and complied with all material terms, covenants and conditions of this Agreement required to be performed or complied with by it on or before the Closing Date.

(c) No action or proceeding shall have been instituted or, to the knowledge of Seller, threatened that would adversely affect or relate materially to the Purchased Assets, or adversely affect the ability of Seller to comply with the provisions of this Agreement.

(d) Buyer's representative shall have verified that all Purchased Assets listed on Exhibits 1 and 2 are accounted for and available for delivery at Closing.

(e) All actions, proceedings, instruments, signatures of Seller, and documents required to execute this Agreement or incident thereto shall have been approved by counsel for Buyer. Such approval shall not be unreasonably withheld.

(f) All governmental and other consents and approvals, if any, necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

8. Indemnification:

8.1 *Assets to Be Conveyed Free of Liabilities or Encumbrances.* Except for performance of the Business Agreements expressly assumed by Buyer hereunder, Buyer assumes no liabilities or obligations of Seller of any kind whatsoever, whether fixed or contingent and whether known or unknown, in connection with the Business and the Purchased Assets. At Closing, Seller shall convey to Buyer title to all of the Purchased Assets free and clear of all liens, charges, claims and encumbrances; and Seller shall, in accordance with Section 8.2 hereof, indemnify and hold Buyer harmless from any and all such liabilities, liens, charges, claims and encumbrances to which the Purchased Assets are or may become subject.

8.2 *Indemnification of Buyer.*

(a) Seller agrees to indemnify and hold Buyer, its successors and assigns, harmless from and against:

(1) Any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising out of or related to the operation of the Business or to ownership of the Purchased Assets by Seller prior to the Closing. Such claims, liabilities and obligations include, but are not limited to, products liability claims, claims or liabilities arising out of the use or storage by Seller, any and all claims, liabilities and obligations arising or required to be performed prior to the Closing under any contract, agreement, lease or instrument assumed by Buyer, except for performance of those Business Agreements.

(2) Any and all damage or deficiency resulting from any misrepresentation, breach of warranty, or nonfulfillment of any agreement on the part of Seller under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby.

(3) Any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses, including reasonable attorneys' fees incurred by Buyer as a result of Seller's failure or refusal to compromise or defend any claim incident to the foregoing provisions.

(b) If any claim or liability shall be asserted against Buyer which would give rise to a claim by Buyer against Seller for indemnification under the provisions of this section, Buyer shall promptly notify Seller in writing of the same, and Seller shall, at its own expense, compromise or defend any such claim; provided, however, that Buyer may, at its own cost and expense, join and cooper-ate with Seller in defending or compromising such claim.

(c) In the event Seller fails to indemnify Buyer as required under the terms of this Article 8, Buyer shall have the right to withhold any payment due until such time as Seller indemnifies Buyer or make other provisions satisfactory to Buyer for correction of any breach of this Agreement or disposition of any claim, lien, or other encumbrance giving rise to Seller's obligation to indemnify.

8.3 *Indemnification of Seller.*

(a) Buyer hereby agrees to indemnify and hold Seller and its successors and assigns harmless from and against:

(1) Any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or related to the ownership of the Purchased Assets by Buyer subsequent to the Closing. Such claims, liabilities, and obligations include, but are not limited to, any and all claims, liabilities and obligations arising or required to be performed subsequent to Closing under any Business Agreement assumed by Buyer pursuant to this Agreement.

(2) Any and all damage or deficiency resulting from any misrepresentations, breach of warranty, nonfulfillment of any agreement or obligation assumed or required to be assumed by Buyer under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished to Seller pursuant to this Agreement, or in connection with any of the transactions contemplated hereby.

(3) Any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses incident to any of the foregoing provisions, including reasonable attorneys' fees incurred by Seller as the result of Buyer's failure or refusal to defend or compromise any claim.

(b) If any claim or liability shall be asserted against Seller which would give rise to a claim by Seller against Buyer for indemnification under the provisions of this section, Seller shall promptly notify Buyer of the same and Buyer shall, at its own expense, compromise or defend any such claim; provided that Seller may, at its own cost and expense, join and cooperate with Buyer in the defense or compromise of such claim.

8.4 *Risk of Loss.* The risk of any loss, damage or destruction to any of the Purchased Assets to be transferred to Buyer pursuant to this Agreement from fire, casualty or other cause shall be borne by Seller at all times prior to the Closing Date. Upon the occurrence of any loss or damage to any material part of the Purchased Assets as a result of fire, casualty or other causes prior to Closing, Seller shall notify Buyer of same in writing immediately, stating with particularity the extent of loss or damage incurred, the cause thereof, if known, and the extent to which restoration, replacement and repair of the Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. Subject to the provisions hereof, Buyer shall have the option (but not the obligation) exercisable within ten (10) days after receipt of such notice from Seller, to elect to consummate the Closing and accept the Intangible Assets in its "then" condition, with a mutually acceptable adjustment to the purchase price for the loss or destruction of any of the Purchased Assets. In the event Buyer elects to consummate the Closing, Seller shall assign to Buyer all rights under any insurance claim covering the loss and pay over to Buyer any proceeds under any such insurance policy theretofore received by Seller with respect thereto.

9. Termination:

9.1 *Right to Terminate Before Closing.* This Agreement may be terminated at any time prior to Closing, and the transactions contemplated hereby may be abandoned at any such time,

(1) by mutual consent of Buyer and Seller;

(2) unilaterally by Buyer or Seller, if there has been a default by the other party in any material respect in the performance of any covenant herein, and such default has not been cured by the Closing Date;

(3) unilaterally by Buyer or Seller, any representation or warranty of the other party is untrue in any material respect; or

(4) unilaterally by Buyer or Seller if the Closing has not taken place by 31st December, 2007 (the "Termination Date").

9.2 *Specific Performance in the Event of Seller's Failure to Close.* If all the conditions precedent to the obligations of either party to close as set forth in this Agreement have been satisfied, but such party shall refuse to close as provided in Article 3 hereof, or in the event of a material breach by either party of its obligations hereunder which is not cured by the Closing Date, then the other party, in addition to any other right or remedy it may have at law or in equity, shall have the right to enforce the terms of this Agreement by decree of specific performance.

10. Miscellaneous:

10.1 *Schedules and Exhibits.* All schedules and exhibits attached to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein.

10.2 *No Assignment, Successors, Assigns, Etc.* The terms and conditions of this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto, their respective heirs, personal representatives, successors and assigns; provided, however, that this Agreement shall not be assigned or conveyed by any party to any person or entity without the prior written consent of the other party hereto.

10.3 *Construction.* This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

10.4 *Counterparts.* This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

10.5 *Survival of Representations and Warranties.* All of Seller's and Buyer's representations and warranties contained herein shall survive the Closing for a period of one year from the Closing Date, after which they shall be null and void.

10.6 *Notices.* Any notices or other communications shall be in writing and shall be considered to have been duly given on the earlier of (1) the date of actual receipt or (2) three days after deposit in the first-class certified U.S. mail, postage prepaid, return receipt requested:

(a) If to Seller, to:

Dr. Vaijayanti Apte
561 Pilgrim Drive, Suite B
Foster City, CA 94404

With copy to: ____________________

(b) If to Buyer, to:

Marya Lambert
819 NE 65th Street
Seattle, Washington 98115

With copy to:

Newman & Newman
505 S. Fifth Avenue, Suite 610
Seattle, Washington 98104

10.7 *Amendment.* This Agreement may be amended at any time prior to Closing by written instrument executed by the parties hereto.

10.8 *Entire Agreement.* This Agreement contains the entire understanding of the parties hereto relating to the subject matter herein.

10.9 *Waiver.* Any default, misrepresentation or breach of any covenant or warranty by a party in connection with this Agreement may be waived in writing by the other party. No such waiver shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of any covenant or warranty, or affect any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of any covenant or warranty.

10.10 *Governing Law.* This Agreement shall be construed in accordance with, and governed by, the law of the state of Washington applicable to agreements made and to be performed wholly within this jurisdiction.

10.11 *Public Announcements.* Neither Seller nor Buyer shall make any public statements, including, without limitation, any press releases, with respect to this Agreement and the transactions contemplated hereby without the prior written consent of the other party (which consent may not be unreasonably withheld), except as may be required by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed by their/its duly authorized officers on the day and year first above written.

	AYURVEDIC ACADEMY, INC. "BUYER"	AYURVEDA INSTITUTE OF AMERICA "SELLER"
By:	[signature]	[signature]
Name:	Sonjoy Mohanty	Dr. Vaijayanti apte
Title:	Managing Director & CEO, Kerala Ayurveda Ltd Corporate Director and President, Ayurvedic Academy,Inc.	Director of Ayurveda Institute of America
Date:	11th December 2007	Dec 12, 07

EXHIBIT 1: INTANGIBLE ASSETS

The list of identified Intangible Assets being sold to the Buyers is as follows:

- Diploma in Ayurvedic sciences Program notes
  - Ayu Phylosophy
  - Dosha Dhatu Mala Vignyan 1 and 2
  - Ayu Nutirtion
  - Ayu Psychology
  - Swasthavritta
  - Herbology 1 and 2
  - Nidan Panchak
  - Panchakarma
  - Kaya chikitsa 1,2,3
  - Clinical management
  - Subtle therapies
  - Astrology
  - Anatomy and Physiology notes
  - Baby care
  - Notes for Kripalu
  - Notes for Mount Madonna
  - Tests and Quizzes for all the courses
  - Manual prepared for internship
- Patient data base

The Buyer will not be liable for any prior period claims for the assets being purchased by them, especially those arising from patient records, wherein the Seller shall hold harmless and indemnify Buyer from and against any claims, fees, and costs, including, without limitation, reasonable attorneys' fees and costs, which are related to or arise from any protected health information purchased by the Buyer as defined in the privacy rules adopted pursuant to the Health Insurance Portability and Accountability Act of 1996.

EXHIBIT 2: LICENSES AND AUTHORIZATIONS

The list of identified Licenses and Authorizations being sold by the Seller to the Buyer is as follows:

- An active license from BPPVE till 2009

	AYURVEDIC ACADEMY, INC. "BUYER"	AYURVEDA INSTITUTE OF AMERICA "SELLER"
By:	[signature]	[signature]
Name:	Sonjoy Mohanty	Dr. Vaijayanti apte
Title:	Managing Director & CEO, Kerala Ayurveda Ltd Corporate Director and President, Ayurvedic Academy,Inc.	Director of ayurveda Institute of America
Date:	11th December 2007	Dec 12, 07

NOTICE OF CASE MANAGEMENT CONFERENCE

Apte

vs.

Ayurvedic Academy

ENDORSED FILED
SAN MATEO COUNTY

DEC 03 2010

Clerk of the Superior Court
By T. Judd
DEPUTY CLERK

Case No. CIV501205

Date: 4/15/11

Time: 9:00 a.m.

Dept. – on Tuesday & Thursday
Dept. 7 – on Wednesday & Friday

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of Court and Local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:
   a. **Serve** all named defendants and file proofs of service on those defendants with the court within **60 days** of filing the complaint (CRC 201.7).
   b. **Serve** a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
   c. **File and serve** a completed Case Management Statement at least **15 days** before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
   d. **Meet and confer,** in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than **30 days** before the date set for the Case Management Conference.

2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.

3. Continuances of case management conferences are highly disfavored unless good cause is shown.
4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation To ADR and Proposed Order (see attached form.). If plaintiff files a Stipulation To ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a **completed** stipulation to another ADR process (e.g., mediation) **10 days** prior to the first scheduled case management conference, the case management conference will be continued for 90 days to allow parties time to complete their ADR session. The court will notify parties of their new case management conference date.
5. If you have filed a default or a judgment has been entered, your case is not automatically taken off the Case Management Conference Calendar. If "Does", "Roes", etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party
6. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
7. The Case Management judge will issue orders at the conclusion of the conference that may include:
   a. Referring parties to voluntary ADR and setting an ADR completion date;
   b. Dismissing or severing claims or parties;
   c. Setting a trial date.
8. The Case Management judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court website at www.sanmateocourt.org.

* Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference (see attached CourtCall information).

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:

FOR COURT USE ONLY

TELEPHONE NO.: FAX NO. *(Optional)*:
E-MAIL ADDRESS *(Optional)*:
ATTORNEY FOR *(Name)*:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
STREET ADDRESS: 400 COUNTY CENTER
MAILING ADDRESS: 400 COUNTY CENTER
CITY AND ZIP CODE: REDWOOD CITY, CA 94063
BRANCH NAME: SOUTHERN

PLAINTIFF/PETITIONER:
DEFENDANT/RESPONDENT:

CASE MANAGEMENT STATEMENT

CASE NUMBER:

(Check one): ☐ **UNLIMITED CASE** (Amount demanded exceeds $25,000) ☐ **LIMITED CASE** (Amount demanded is $25,000 or less)

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: Time: Dept.: Div.: Room:

Address of court *(if different from the address above)*:

☐ **Notice of Intent to Appear by Telephone, by *(name)*:**

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. ☐ This statement is submitted by party *(name)*:
   b. ☐ This statement is submitted **jointly** by parties *(names)*:

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*:
   b. ☐ The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. ☐ The following parties named in the complaint or cross-complaint
      (1) ☐ have not been served *(specify names and explain why not)*:
      (2) ☐ have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) ☐ have had a default entered against them *(specify names)*:
   c. ☐ The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served)*:

4. **Description of case**
   a. Type of case in ☐ complaint ☐ cross-complaint *(Describe, including causes of action)*:

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. January 1, 2009]

CASE MANAGEMENT STATEMENT

Cal. Rules of Court, rules 3.720–3.730
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

CM-110

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☐ days *(specify number):*
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

CM-110

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

10. d. The party or parties are willing to participate in *(check all that apply):*
   (1) ☐ Mediation
   (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
   (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
   (4) ☐ Binding judicial arbitration
   (5) ☐ Binding private arbitration
   (6) ☐ Neutral case evaluation
   (7) ☐ Other *(specify):*

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court *(specify exemption):*

11. Settlement conference

☐ The party or parties are willing to participate in an early settlement conference *(specify when):*

12. Insurance

a. ☐ Insurance carrier, if any, for party filing this statement *(name):*

b. Reservation of rights: ☐ Yes ☐ No

c. ☐ Coverage issues will significantly affect resolution of this case *(explain):*

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other *(specify):*

Status:

14. Related cases, consolidation, and coordination

a. ☐ There are companion, underlying, or related cases.
   (1) Name of case:
   (2) Name of court:
   (3) Case number:
   (4) Status:

☐ Additional cases are described in Attachment 14a.

b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by *(name party):*

15. Bifurcation

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. Other motions

☐ The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☐ The following discovery will be completed by the date specified *(describe all anticipated discovery)*:

Party	Description	Date

    c. ☐ The following discovery issues are anticipated *(specify)*:

18. **Economic litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain)*:

    b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify)*:

21. Total number of pages attached *(if any)*: ________

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

Appropriate Dispute Resolution (ADR) Information Sheet
Superior Court of California, San Mateo County

Appropriate Dispute Resolution (ADR) is a way of solving legal problems without going to trial. All types of disputes can be resolved through ADR. The Court encourages you to use some form of ADR before you proceed to trial. The most popular form of ADR is mediation. The Multi-Option ADR Project can help you choose the option that is best for your case and refer you to an experienced ADR provider.

What are the Advantages of Using ADR?

- ***Faster*** – Traditional litigation can take years to complete but ADR usually takes weeks or months.
- ***Cheaper*** – Parties can save on attorneys' fees and litigation costs.
- ***More control & flexibility*** – Parties choose the ADR process most appropriate for their case.
- ***Cooperative & less stressful*** – In mediation, parties cooperate to find a mutually agreeable solution to their dispute.

What are the Disadvantages of Using ADR?

- ***You may go to Court anyway*** – If you can't resolve your case using ADR, you may still have to spend time and money on your lawsuit.
- ***Not free*** – The neutrals charge fees (except in judicial arbitration), but you may qualify for financial aid.

Are There Different Kinds of ADR?

- **Mediation** - A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options and agree on a solution that is acceptable to all sides.
- **Judicial Arbitration** – Is an informal hearing where a neutral person (arbitrator) reviews the evidence, hears arguments and makes a decision on your case. In non-binding judicial arbitration, parties have the right to reject the arbitrator's decision and proceed to trial. For more information regarding judicial arbitration, please see the attached sheet or call (650) 363-4896.
- **Binding Arbitration** - The parties agree ahead of time to accept the arbitrator's decision as final. Parties who choose binding arbitration give up their right to go to Court and their right to appeal the arbitrator's decision.
- **Neutral Evaluation** - A neutral person (evaluator) listens to the parties, asks them questions about their case, reviews evidence and may hear witness testimony. The evaluator helps the parties identify the most important legal issues in their case and gives them an analysis of the strengths and weaknesses of each side's case. Special neutral evaluation guidelines are available on the Court's website at www.sanmateocourt.org/adr.
- **Settlement Conference** – Although similar to mediation, the neutral (a judge) may take more control in encouraging parties to settle. Settlement conferences take place at the courthouse. All cases have a mandatory settlement conference approximately 2-3 weeks before the trial date. For questions regarding settlement conferences, call (650) 599-1076.

How Does Voluntary Mediation/Neutral Evaluation Work in San Mateo County?

- The person who files the lawsuit (the plaintiff) must include this ADR Information Sheet with the complaint when serving the defendants in the case.
- All the parties in your case will meet with a judge at your first Case Management Conference (CMC), which is scheduled within 120 days of the filing of the complaint. The judge will speak to you about your voluntary ADR options, encourage you to participate in ADR and ask you to meet with Court ADR staff.
- If you and the parties decide to use ADR, Local Rule 2.3(i)(3) states that you must file a *Stipulation and Order to ADR* with the Court Clerk's Office. This form lets the Court know both whom you have selected as your ADR neutral and the date of the ADR session.
- You and the other parties can find your own ADR neutral for the case or use a neutral who is on the Court's ADR Panel.
  - For a list of Court ADR neutrals and their resumes, visit the Court's website at www.sanmateocourt.org/adr. (Go to "Civil ADR Program," "Civil ADR Program Panelist List" and click on any provider's name.)
- If you decide to do ADR and file a *Stipulation and Order to ADR* at least 10 days before your **first** CMC, the Court will postpone (continue) your first CMC for 90 days to allow the parties time to resolve the case using ADR. The Clerk's Office will send you a notice with your new CMC date.
- Within 10 days of completing ADR, you and your lawyer (if you have one) must fill out either an Evaluation By Attorneys or Client Evaluation and mail or fax it to the ADR offices at: 400 County Center, Courtroom 2F, Redwood City, CA 94063; (650) 599-1754 (fax).

Do I Have to Pay to Use ADR?

- Yes. You and the other parties will pay the ADR neutral directly. However, you do not have to pay the Court for either judicial arbitration or for the mandatory settlement conference that is scheduled before your trial.
- If you expect to have difficulty paying the ADR provider's fee, ask the ADR Coordinator for a financial aid application. You will need to fill out this application to determine whether or not you qualify for financial assistance.

In San Mateo County, parties also can take their case to the community mediation organization, the Peninsula Conflict Resolution Center ("PCRC"), and have their case mediated by PCRC's panel of trained and experienced volunteer mediators. To learn more about programs and fees, contact PCRC's Manager of Mediation Programs at (650) 513-0330.

For more information, visit the court website at www.sanmateocourt.org/adr or contact the Multi-Option ADR Project: 400 County Center, Courtroom 2F, Redwood City, CA 94063. (650) 599-1070, (650) 599-1073/fax: (650) 599-1754

Judicial Arbitration, one of the available Appropriate Dispute Resolution (ADR) options, differs from other options in that it is usually court-ordered, unless the parties agree to it.

What are the Advantages of Using Judicial Arbitration?

- ***Free*** - Parties do not have to pay for the arbitrator's fee.
- ***Fast*** - Parties are usually given 120 days from the date of the Case Management Conference (CMC) to have their case heard by the appointed arbitrator.
- ***Informal*** - The hearing is conducted by an arbitrator who issues an award. (Arbitrators are usually attorneys who practice or have practiced in San Mateo County.)

What are the Disadvantages of Using Judicial Arbitration?

- The award issued by the arbitrator is not always binding (unless the parties stipulated otherwise). If any party requests a trial within 30 days of the award, the award becomes void and the case continues on to trial.

How Does Judicial Arbitration Work in San Mateo County?

- During your first CMC hearing, the judge may decide to order you to judicial arbitration. You will then receive instructions and a proposed list of arbitrators in the mail.
- Parties also may agree to judicial arbitration by filing a *Stipulation and Order to ADR* form at least 10 days before the first CMC. The CMC clerk will then vacate your CMC hearing and send the case to arbitration. The parties will receive instructions and a proposed list of arbitrators in the mail.
- Parties can stipulate (agree) to an arbitrator on the Court's Judicial Arbitration Panel list. Otherwise, proposed names of arbitrators will be sent to the parties.
  - For a list of arbitrators, their resumes, and other information, visit the Court's website at www.sanmateocourt.org/adr. (Go to "Judicial Arbitration Program," "Judicial Arbitration Panelist List" and click on the arbitrator's name. To view the arbitrators by subject matter, click on "Judicial Arbitration Panelists by Subject Matter.")
- After the arbitration hearing is held and the arbitrator issues an award, the parties have 30 days to turn down/reject the award by filing a Trial de Novo (unless they have stipulated that the award would be binding).
- If the parties reject the award and request a Trial de Novo, the Court will send out notices to the parties of the Mandatory Settlement Conference date and the trial date.
- Following your arbitration hearing, you will also receive an evaluation form to be filled out and returned to the Arbitration Administrator.

For more information, visit the court website at www.sanmateocourt.org/adr or contact Judicial Arbitration: 400 County Center, First Floor, Redwood City, CA 94063. Phone: (650) 363-4896 and Fax: (650) 365-4897

DIVISION II
COURT MANAGEMENT - SUPERIOR COURT

CHAPTER 1. FORM AND SERVICE OF PAPERS

Rule 2.0 Transfer of Court-Related Functions of the County Clerk to the Superior Court

Pursuant to the authority contained in Government Code section 69898, the court hereby transfers from the County Clerk to the Superior Court Executive Officer, under the direction of the Presiding Judge, all of the powers, duties, and responsibilities required or permitted to be executed or performed by the County Clerk in connection with judicial actions proceedings, and records.

(Adopted, effective July 1, 1996.)

Rule 2.1 Form of Papers Presented for Filing

Reference, CRC, rule 2.100, et seq.

(Adopted, effective July 1, 1996) (Amended effective January 1, 2000) (Amended, effective January 1, 2007)

Rule 2.1.1 Citations to Non-California Authorities.

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 2.1.2 Requests for Judicial Notice

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 2.1.3 California Environmental Quality Act (CEQA)

If a petition for writ of mandate includes claims under CEQA (Public Resources Code section ~~21000 et. seq.), the case will be assigned to a judge designated to hear CEQA actions pursuant to Public~~ Resources Code section 21167.1. Plaintiff shall identify the petition as being filed pursuant to "CEQA" on the face of the petition.

(Adopted, effective January 1, 1999)(renumbered from 2.1.4 effective January 1,2000)

Rule 2.1.4 Documents Produced Through a Nonparty

If a party proposes to obtain documents in the custody of a nonparty, as by a subpoena duces tecum, and such documents may be produced by certification or otherwise in lieu of personal appearance by a witness custodian, the request for such documents should specify that they be delivered not later than the first day for which the trial is calendared.

(Adopted, effective January 1, 2000)

CHAPTER 2. CIVIL TRIAL COURT MANAGEMENT RULES
PART 1. MANAGEMENT DUTIES

Rule 2.2 Trial Court Management

Reference CRC, rules 3.700, 3.710-3.713, 10.900, 10.901

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2007)

PART 2. CASEFLOW MANAGEMENT

Rule 2.3 New Case Management

This rule applies to all civil cases with the exception of the following: (1) juvenile court matters; (2) probate matters; (3) family law matters; and (4) civil cases which, based on subject matter, have been assigned to a judge, or to more than one judge, for all purposes. For rules applicable to these exceptions, see CRC 2.20, 2.30, 2.570-2.573, 2.585, 2.810-2.819, 2.830-2.834, 3.650, 3.700-3.735, 3.920-3.927, 3.1370, 3.1380-3.1385, 3.1590-3.1591, 3.1806, 5.590, 10.900-10.901, 10.910, 10.950-10.953,.

(a) Purposes and Goals

The purposes and goals of the San Mateo Superior Court Civil Case Management System effective January 1, 1992 are:

(1) To manage fairly and efficiently, from commencement to disposition, the processing of civil litigation.

(2) To prepare the bench and bar for full implementation of the Trial Court Delay Reduction Act (A.B. 3820) on July 1, 1992; and

(3) To encourage parties to agree to informal discovery early in the life of the case, to use standard form interrogatories and to promote alternative dispute resolution. Nothing in these rules is intended to prevent the parties from stipulating to an earlier intervention by the court by way of a case management conference, settlement conference or any other intervention that seems appropriate.

(4) In accordance with Sections 3.710-3.715, 10.900, 10.901 of the California Rules of Court, Local Rule 2.3 is adopted to advance the goals of Section 68603 of the Government Code and Section 2.1 of the Standards of Judicial Administration recommended by the Judicial Council.

(b) Team concept

Beginning January 1, 1994 civil litigation will be managed primarily by a team of two program judges.

The clerk will assign the case to a program judge at the time the complaint is filed. The case shall be managed by the assigned program judge until disposition or until the case is assigned to a trial department.

(c) Cases filed after July 1, 1992

Upon the filing of a complaint after July 1, 1992, the case shall be subject to all of the civil case management system rules set forth below. Cases filed before July 1, 1992 shall also be subject to these rules except for subsection (d) (Filing and service of pleadings; exceptions).

(d) Filing and service of pleadings; exceptions.

(1) Complaint: Except as provided in paragraph 5 below, plaintiff shall within 60 days after filing of the complaint serve the complaint on each defendant along with:

(A) A blank copy of the Judicial Council Case Management Statement;

(B) A copy of Local Rule 2.3;

(C) The Notice of Case Management Conference.

If a matter has been submitted to arbitration pursuant to uninsured motorist insurance, the plaintiff shall file a notice to that effect with the court at the time of filing the complaint, or at the time the matter is submitted. The notice shall include the name, address and telephone number of the insurance company, along with the claim number or other designation under which the matter is being processed.

(2) Cross-complaint: Except as provided in paragraph (5) below, each defendant shall within 30 days after answering the complaint file any cross-complaint (within 50 days if compliance with a governmental claims statute is a prerequisite to the cross-complaint) not already served with the answer under Code of Civil Procedure section 428.50 and serve with that cross-complaint:

(A) A blank copy of the Judicial Council Case Management Statement;

~~(B) A copy of Local Rule 2.3;~~

(C) The Notice of Case Management Conference.

(3) Responsive pleadings: Except as provided in paragraph 5 below, each party served with a complaint or cross-complaint shall file and serve a response within 30 days after service. The parties may by written agreement stipulate to one 15-day extension to respond to a complaint or cross-complaint.

If the responsive pleading is a demurrer, motion to strike, motion to quash service of process, motion for a change of venue or a motion to stay or dismiss the case on forum non conveniens grounds, and the demurrer is overruled or the motion denied, a further responsive pleading shall be filed within 10 days following notice of the ruling unless otherwise ordered. If a demurrer is sustained or a motion to strike is granted with leave to amend, an amended complaint shall be filed within 10 days following notice of the ruling unless otherwise ordered. The court may fix a time for filing pleadings responsive to such amended complaint.

(4) Proofs of service: Proofs of service must be filed at least 10 calendar days before the case management conference.

(5) Exceptions for longer periods of time to serve or respond:

(A) Time to serve may be extended for good cause: Upon ex parte application to the court, *in compliance with California Rules of Court 3.1200 –3.1206,* within 60 days of the date the complaint was filed, plaintiff may obtain an extension of time to serve to a date on or before the case management conference, if good cause is shown by declaration of counsel (or plaintiff filing in propria persona). An additional extension of the time to serve (an initial extension if the application is by a cross-complainant) may be obtained upon written application to the court upon good cause shown before the prior extension has expired. The filing of a timely application for an extension will automatically extend the time to serve by five days, whether or not the application is granted.

Good cause will be found if the declaration shows that the action is filed against a defendant who is an uninsured motorist, and the plaintiff's claim is subject to an arbitration provision in plaintiff's contract of insurance. In determining good cause in other cases, the court will give due consideration to any standards, procedures and policies which have been developed in consultation with the bar of the county through the bench-bar trial court delay committee.

(B) Additional extension of time if uninsured motorist arbitration is pending. In addition to any extension of time obtained pursuant to subsection (5)(A) above, if an uninsured motorist arbitration is still pending between plaintiff and plaintiff's insurance carrier 30 days prior to the expiration of the extension, plaintiff may obtain an additional extension of time by an ex parte application supported by a declaration showing the scheduled or anticipated date of the arbitration hearing and the diligence of plaintiff in pursuing arbitration.

(C) Time to respond may be extended for good cause: Before the time to respond has expired, any party served with a complaint or cross-complaint may, with notice to all other parties in the action, make ex parte application to the court upon good cause shown for an extension of time to respond. The filing of a timely application for an extension will automatically extend the time to respond by five days, whether or not the application is granted.

(e) Case management conference

(1) Date of conference: Unless the parties stipulate in writing and the court orders that the case be earlier referred to arbitration, a case management conference will be set by the clerk at the time the complaint is filed. (Government Code 68616)

(2) Attendance at the case management conference is mandatory for all parties or their attorneys of record.

(3) Plaintiff must serve the Notice of Case Management on all parties no later than 30 calendar days before the conference, unless otherwise ordered by the Court.

(4) The Court will deem the case to be at-issue at the time of the conference (Reference: CRC 3.714(a)) absent a showing of extraordinary circumstances.

(5) The conference may be set at an earlier date by order of the Court or by written stipulation of the parties.

(6) Designation of trial counsel: Trial counsel and, except for good cause shown, back-up trial counsel, must be specified at the case management conference. If such counsel is not

specified, relief from the scheduled trial date may not be obtained based upon the ground that counsel is engaged elsewhere.

(7) Conference orders: At the initial conference, the program judge will make appropriate pre-trial orders that may include the following:

(A) An order referring the case to arbitration, mediation or other dispute resolution process;

(B) An order transferring the case to the limited jurisdiction of the superior court;

(C) An order assigning a trial date;

(D) An order identifying the case as one which may be protracted and determining what special administrative and judicial attention may be appropriate, including special assignment;

(E) An order identifying the case as one which may be amenable to early settlement or other alternative disposition technique;

(F) An order of discovery; including but not limited to establishing a discovery schedule, assignment to a discovery referee, and/or establishing a discovery cut-off date;

(G) An order scheduling the exchange of expert witness information;

(H) An order assigning a mandatory settlement conference date pursuant to Local Rule 2.3(k) and 2.4; and

(I) Other orders to achieve the interests of justice and the timely disposition of the case.

(8) CourtCall Telephonic Appearances

(A) Reference CRC, Rule 3.670

(B) Procedure. Telephonic appearances through the use of CourtCall, an independent vendor, are permitted at case management conference hearings. A party wishing to make a telephone appearance must serve and file a Request for Telephone Appearance Form with CourtCall not less than five court days prior to the case management conference hearing. Copies of the Request for CourtCall Appearance form and accompanying information sheet are available in the Clerk's office. There is a fee to parties for each CourtCall appearance and fees are paid directly to CourtCall. CourtCall will fax confirmation of the request to parties.

(C) On the day of the case management conference hearing, counsel and parties appearing by CourtCall must check-in five minutes prior to the hearing. Check-in is accomplished by dialing the courtroom's dedicated toll-free teleconference number and access code that will be provided by CourtCall in the confirmation. Any attorney or party calling after the check-in period shall be considered late for the hearing and shall be treated in the same manner as if the person had personally appeared late for the hearing.

(D) At a case management conference, parties may be referred to an appropriate dispute resolution ("ADR") process (e.g., mediation, binding arbitration or neutral evaluation). If parties are referred ADR, they must redial the dedicated toll-free teleconference number immediately following their case management conference appearance and use a second CourtCall access code to telephonically appear at the ADR referral meeting with ADR staff. If a case has been referred to ADR, a party's case management conference appearance is not complete until they have also telephonically appeared at the mandatory ADR referral. If parties are referred to judicial arbitration, they do not have to appear at the ADR referral.

(f) Case Management Statement

At least 15 calendar days before the scheduled case management conference, each party shall file with the court and serve on all other parties a completed Judicial Council Case Management Statement. If the case is set for further case management conference hearing(s), all parties must file updated Case Management Statements 15 (fifteen) calendar days prior to the scheduled hearings(s).

(g) Appropriate Dispute Resolution, ADR, Policy Statement

The Court finds it is in the best interests of parties to litigation to participate in appropriate dispute resolution procedures, including but not limited to mediation, neutral evaluation, private or judicial arbitration, voluntary settlement conferences, and the use of special masters and referees. Therefore, all parties shall stipulate to, or be referred to, an appropriate form of dispute resolution before being set for trial, unless there is good cause to dispense with this requirement. Parties are encouraged to stipulate to judicial arbitration or ADR prior to the case management conference.

(h) Stipulations to Arbitration

(1) If the case is at issue, and all counsel and each party appearing in propia persona stipulate in writing to judicial arbitration prior to the case management conference, discovery will remain open following judicial arbitration. A written stipulation to judicial arbitration must be filed with the clerk and a copy immediately sent to the Master Calendar Coordinator at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference. A written stipulation to arbitrate will be deemed to be without a limit as to the amount of the award unless it expressly states otherwise.

(2) It is the policy of this court to make every effort to process cases in a timely manner. Parties who elect or are ordered b the court to judicial arbitration must complete the arbitration hearing within the time frame specified by the court.

Parties who wish to continue the arbitration hearing after the jurisdictional time frame must submit a court provided form entitled "*Ex Parte Motion and Stipulation for continuance of Judicial arbitration Hearing.*" Parties can obtain a copy of the form by contacting the court's judicial arbitration administrator [See Local Rule 10.1(d)(1)]. Continuances without adequate grounds will not be considered. A case management judge will either grant or deny the request for continuance. If the request is denied, the case may be assigned a trial date. If the request is granted, the judge will impose a new deadline by which the arbitration must be completed.

(3) Parties who wish to change their election from judicial arbitration to another form of ADR must file a "Stipulation and [Proposed] Order to [Mediation, Neutral Evaluation, etc.] in Lieu of [Court-Ordered] Judicial Arbitration" with the Clerk of the Court. The Stipulation must

state that parties have: (i) notified both the judicial arbitration and ADR coordinators; (ii) cancelled the judicial arbitration hearing: (iii) scheduled the ADR session within five months of the previously scheduled judicial arbitration hearing; and (iv) stipulated to a trial date, which is not more than six months from the previously scheduled judicial arbitration hearing.

(i) Stipulations to Private ADR

(1) If a case is at issue and all counsel and each party appearing in propria persona stipulate in writing to ADR and file a completed Stipulation and Order to ADR with the clerk of the court at least ten (10) calendar days before the first scheduled case management conference, that conference shall be continued 90 days. The court shall notify all parties of the continued case management conference.

(2) If counsel and each party appearing in propria persona are unable to agree upon an appropriate ADR process, they shall appear at the case management conference.

(3) Following an appearance at a case management conference hearing, parties shall, within 21 calendar days, file a completed Stipulation to ADR and Proposed Order identifying the name of the ADR provider, date of ADR session and the names of those who will be in attendance at the ADR session. The completed Stipulation to ADR and Proposed Order shall be filed with the court by plaintiff's counsel. The parties, through counsel, if represented, shall confer with the court's Multi-Option ADR Project (M.A.P.) staff if they cannot agree on a provider. Plaintiff's counsel, shall additionally, send a copy of the completed Stipulation to the court's M.A.P. offices within the same 21-day period.

(4) All parties and counsel shall participate in the ADR process in good faith.

(5) To maintain the quality of ADR services the court requires cooperation from all parties, counsel and ADR providers in completing ADR evaluation forms, and returning these forms to the M.A.P. offices within 10 calendar days of the completion of the ADR process.

(6) ADR Program Complaint Policy. If mediation session participants have a concern about the mediation process or the conduct of a mediator affiliated with the court's program, the court encourages them to speak directly with the mediator first. In accordance with California Rules of Court §3.865 et seq., parties may also address written complaints, referencing the specific Rule of Court allegedly violated, to the Court's Civil ADR Program Coordinator. (For complete complaint procedure guidelines, see court web site: www.sanmateocourt.org/adr/civil)

(7) In accordance with the Code of Civil Procedure, section 1033.5(c)(4), the court, in its discretion, may allow the prevailing party at trial the fees and expenses of the ADR provider, unless there is a contrary agreement by the parties.

(j) Setting Short Cause Matters

If the parties agree that the time estimated for trial is 5 hours or less prior to the conference, a written stipulation shall be filed at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference and a copy immediately sent to the Master Calendar Coordinator. In the absence of a stipulation, either party may file a motion to have the matter designated a "short cause" and set the case accordingly. All such matters shall be presumed short cause unless the contrary is established at the hearing on the motion.

(k) Law and Motion

All law and motion matters shall be heard by the regularly assigned Law and Motion judge.

(l) Settlement Conferences

All cases not assigned to arbitration or some other dispute resolution mechanism will be assigned two settlement conference dates, the first of which will be at the earliest practicable date under the circumstances presented by the case, and the second within approximately two weeks prior to the assigned trial date.

Cases assigned to arbitration or other form of ADR may be subjected to a settlement conference prior to the arbitration or ADR process, but will be assigned to a pre-trial settlement conference only if the arbitration/ADR procedure fails to resolve the case.

All cases which fail to resolve by the trial date will be subject to an additional settlement conference on the trial date.

All settlement conferences shall be subject to the requirements specified in Local Rule 2.4.

(m) Sanctions

Sanctions pursuant to CRC 2.30 shall be imposed for any violation of the civil case management system rules. The minimum sanction imposed shall be $150.00 payable to the court; sanctions payable to the court may be larger where appropriate and will be in addition to appropriate attorney fees and calendar changes, including any appropriate change in calendar status of the action.

Sanctions mandated hereby may be waived by the judge conducting the conference only upon an application showing good cause why sanctions should not be imposed.

(Adopted, effective July 1, 1996)(Amended, effective January 1,2000) (Amended, effective January 1, 2003) (Amended effective July 1, 2003) (Amended, effective January 1, 2005)(Amended, effective January 1, 2006) (Amended, effective January 1, 2007) (Amended, effective January 1, 2010)

Rule 2.3.1 Orders to Show Cause re: Dismissals

(a) A hearing on an order to show cause why the case should not be dismissed for failure to prosecute the matter shall be set at the two year anniversary of the filing of the complaint and/or cross-complaint.

(b) An order to show cause hearing shall be set 45 days after court's receipt of notice of settlement.

(c) An order to show cause hearing regarding dismissals may be set by the court to achieve the interests of justice and the timely disposition of the case.

(d) An order to show cause hearing re: failure to complete judicial arbitration within the court-ordered time frame may be heard during the case management calendar. Sanctions may be imposed and a trial date may be assigned.

(Adopted, effective January 1,2000) (Amended, effective January 1, 2003)(Amended, effective January 1, 2006)

Rule 2.4 Settlement Conference

Reference: California Rule of Court, rule 3.138.

(a) At all settlement conferences, notwithstanding any other Rule:

(1) The attorney who will try the case or an informed associate with full authority to negotiate a settlement of the case shall personally attend.

(2) Any persons whose consent is required to authorize settlement shall personally attend; those parties that are corporations shall have in attendance an officer or other employee with authority to bind the corporation. Powers of attorney, oral or written, granting counsel settlement authority are unacceptable as a substitute for personal attendance at this conference. Defendant and cross-defendant shall personally attend if there is no insurance coverage, if there is an unsatisfied deductible, or if the insurance carrier is demanding that the insured contribute to settlement.

(3) With respect to any insured party, a representative of the insurance carrier with authority to settle which is meaningful considering the exposure to loss presented shall personally attend. If the claims representative in personal attendance has any limitation on his or her settlement authority, a representative of the carrier who has no such limitations shall be available to the court by telephone and shall remain available until released by the judge conducting the conference, regardless of the time of day at the location of that representative.

(4) Upon arrival at the department to which the conference has been assigned, counsel shall check in with the clerk and shall verify the attendance of those persons whose presence is required.

(5) Notwithstanding the provisions of CRC 3.1380(c), no later than five(5) court days before the date set for the settlement conference each party shall lodge with the office of the court administrator and serve on all other parties a written statement setting forth the following:

(A) A statement of facts.

(B) The contentions of each party to the action regarding liability and damages.

(C) An itemized list of special damages.

(D) In any case in which personal injury is claimed:

(i) A description of the nature and extent of any injury claimed, including residuals.

(ii) A description of the basis for and method of calculation of any claimed wage loss.

(E) The most recent demand and offer or a description of any other proposed settlement between or among the parties.

(6) All parties shall be prepared to make a bona fide offer of settlement.

(b) The personal attendance of any person who is required by these rules to be present may be excused only by the presiding judge upon application made prior to the day on which the conference is scheduled. Any such person whose attendance is excused must remain available by telephone until he or she has been excused by the judge conducting the conference regardless of the time of day at the location of that person.

(c) No conference may be continued without the consent of the presiding judge or, if known, the judge to whom the case has been assigned for conference.

(d) At all such conferences, the judge of the department to which the conference has been assigned shall first attempt to settle the case. If settlement discussions are inconclusive, the judge may adjourn the conference to a later date for further settlement discussions.

(e) Sanctions pursuant to CRC 2..30 shall be imposed for any violation of this rule. The minimum sanction imposed shall be $150.00 payable to the court; sanctions payable to the court may be larger where appropriate and will be in addition to appropriate attorney fees and calendar changes.

Sanctions mandated hereby may be waived by the judge conducting the conference only upon an application showing good cause why sanctions should not be imposed.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2003)(Amended, effective July 1, 2005) (Amended, effective January 1, 2007) (Amended, effective January 1, 2009)

PART 3. CALENDAR MANAGEMENT

Rule 2.5 Trial Date Settlement Conference

A further settlement conference shall be held on the date the case is called for trial in accordance with the procedures outlined in and with the attendance of those persons designated in Local Rule 2.4.

(Adopted, effective July 1, 1996)

Rule 2.6 Refund of Jury Fees: Duty to Notify Court

(Adopted, effective July 1, 1996) (REPEALED and Renumbered as Rule 2.7.6)

CHAPTER 3. [RESERVED]

CHAPTER 4. JURY RULES

Rule 2.7 Length of Jury Service

In compliance with CRC 2.1002, a person has fulfilled his or her jury service obligation when he or she has:

(a) Served on one trial until discharged.

(b) Been assigned on one day for jury selection until excused by the jury commissioner.

(c) Attended court but was not assigned to a trial department for selection of a jury before the end of that day.

(d) Been assigned to a trial department for selection of a jury and has been excused by the trial judge.

(e) Served one day on call.

(f) Served no more than 5 court days on telephone standby.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2007)

Rule 2.7.1 Proposed Jury Instructions

(a) Reference California Rules of Court, Rules 2.1055 and 2.1050.

(b) The Trial Department shall determine in its discretion the timing of submission of proposed jury instructions.

(Amended, effective January 1, 2002) (Amended, effective January 1, 2006) (Amended, effective January 1, 2007)

Rule 2.7.2 Duty Of Counsel with Respect to Jury Instructions

Before delivery of proposed jury instructions to the trial judge and opposing counsel, counsel shall fill in all blanks, make all strikeouts, insertions and modifications therein which are appropriate to the case. Submission of a form, which requires additions or modifications to constitute a complete and intelligible instruction, shall not be deemed a request for such instruction.

In addition to a hard copy of the proposed jury instructions, counsel shall provide the modified instructions on a CD or USB flash drive, also commonly referred to as a thumb drive, and a clean copy of the instructions to be given to the jury.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2006) (Amended, effective January 1, 2010)

Rule 2.7.3 Form of Proposed Jury Instructions (CCP §§ 607a, 609.)

All proposed jury instructions shall conform to the requirements of California Rules of Court, Rule 2.1055. Any jury instructions requested after the conclusion of taking evidence shall be in writing.

The court, in its discretion, may permit instructions to be sent into the jury room in "Booklet Form". In "Booklet Format" the text of the instruction is printed continuously on the page and may result in several instructions to the page. Such instructions may be accompanied by a table of contents.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2006) (Amended, effective January 1, 2007)

Rule 2.7.4 Changing Jury Instructions

If, after the jury instruction conference and at any time before giving the instructions and verdict and findings forms to the jurors, the trial judge determines to make any substantive change therein, all parties should be so advised on the record outside the hearing of jurors.

(Adopted, effective January 1, 2000)

Rule 2.7.5 Jury Instruction Conference

Before final argument and after submission to the trial judge of all proposed jury instructions, verdict and findings forms, a conference outside the presence of jurors will be held. Ordinarily, a reporter or recorder is not required at the commencement of such conference.

In the event the trial judge intends to give any instructions or use any form of verdict or findings on the court's own motion, such instructions, verdicts or findings should be delivered to counsel.

The trial judge will then discuss with counsel:

(1) Whether any requested proposed instructions, verdicts or findings are patently inappropriate and will be voluntarily withdrawn;

(2) Whether there is any patent omission of instructions, verdicts or findings which are appropriate and that may be given without objection;

(3) Whether there is any other modification, namely those to which the parties will stipulate.

Counsel shall meet prior to this conference to discuss each other's jury instructions and classify them into (1), (2) and (3) above.

The foregoing unreported conference will generally result in clarification of the matters, and creation of three categories of instructions, verdicts or findings that may be withdrawn, given or modified.

Thereafter, the conference should be reported and the trial judge should confirm for the record the matters agreed upon. The trial judge should also specify those instructions, verdicts and findings forms the court proposes to give, refuse or modify, whether at the request of a party or on the court's own motion. The court will hear any objections to the foregoing and rule thereon.

The trial judge should sign each requested instruction and indicate the disposition thereof, all of which shall be thereafter filed by the clerk. If a requested instruction is withdrawn, counsel shall so indicate by writing "withdrawn" and signing or initialing such instruction.

(Adopted, effective January 1, 2000)

Rule 2.7.6 Refund of Jury Fees: Duty to Notify Court

Jury fees shall be refunded pursuant to CCP Section 631.3 only if the party depositing the fees has given the master calendar coordinator written notice, at least two court days before the trial date, that the case settled, dropped or that the party's motion for continuance has been granted.

(Adopted, effective July 1, 2004 [former Rule 2.6])

CHAPTER 5. GENERAL RULES

Rule 2.8 Family Law Rules

The local rules of San Mateo Superior Court relating to Family Law are contained in Division V of these rules, infra.

(Adopted, effective July 1, 1996)

Rule 2.9 Required Action

Action shall be taken on all calendared cases and a future date for action shall always be set. No case shall go "off calendar" without a future action being set.

(Adopted, effective July 1, 1996.)

Rule 2.10 Interpreters and Translators

a) Notice. When a party desires an interpreter, it shall be the responsibility of that party to give notice to the Court and all other parties of record. That party shall make arrangements for the presence and the payment of the interpreter.

b) Qualifications. Unless the interpreter is an official court interpreter, the interpreter's name and qualifications shall be provided to the court and opposing counsel five (5) court days prior to the date of the interpreter's appearance. If the interpreter is an official court interpreter, no prior disclosure is required.

c) Relations or friends. Without the consent of all parties, a relation or a friend may not be used as an interpreter or translator in a contested proceeding.

(Adopted, effective January 1, 2000)

Rules 2.11 thru 2.19 (Reserved)

CHAPTER 6. CIVIL TRIAL RULES

Rule 2.20 Trial Motions, Briefs, Statements, and Witness Lists

Upon assignment to a trial department for trial by a jury, each party shall file with that department the following:

(1) Any in limine motions and response thereto;
(2) Any trial briefs;
(3) A concise non-argumentative statement of the case to be read to the jury; and

(4) A list of possible witness who may testify in the trial to be read to the jury panel by the court.

(Adopted, effective January 1, 2002)

Rule 2.21 In Limine Motions

Any in limine motions shall be served upon opposing counsel not less than five (5) days prior to trial. Any response shall be served upon the proponent of the motion not later than the first appearance in the Department of the Presiding Judge for trial assignment.

(Adopted, effective January 1, 2002)

Rule 2.22 Production of Exhibits

Any party intending to offer any exhibit at the time of trial shall be prepared, by the time of assignment to a trial department, with an original and sufficient copies of each such exhibit for all other parties and the court. The court may make, in it discretion, any orders it deems appropriate regarding the exchange and presentations of exhibits.

(Adopted, effective January 1, 2002)

RULE NUMBERS 2.23 TO 2.29 ARE RESERVED

CHAPTER 7. COMPLEX CASES

Rule 2.30 Determination of Complex Case Designation.

A. Decision of Complex Case to be Made by Presiding Judge

The Presiding Judge shall decide whether an action is a complex case within the meaning of California Rules of Court, Rule 3.400, subdivision (a), and whether it should be assigned to a single judge for all purposes. All status conferences or other hearings regarding whether an action should be designated as complex and receive a singly assigned judge shall be set in the Presiding Judge's department.

B. Provisional Designation.

An action is provisionally a complex case if it involves one or more of the following types of claims: (1) antitrust or trade regulation claims; (2) construction defect claims involving many parties or structures; (3) securities claims or investment losses involving many parties; (4) environmental or toxic tort claims involving many parties; (5) claims involving massive torts; (6) claims involving class actions; or (7) insurance coverage claims arising out of any of the claims listed in subdivisions (1) through (6).

The Court shall treat a provisionally complex action as a complex case until the Presiding Judge has the opportunity to decide whether the action meets the definition in California Rules of Court, Rule 3.400, subdivision (a).

C. Application to Designate or Counter-Designate an Action as a Complex Case.

Any party who files either a Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 3.401) or a counter or joinder Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 3.402, subdivision (b) or (c)), designating an action as a complex case in Items 1, 2 and/or 5, must also file an accompanying Certificate Re: Complex Case Designation in the form prescribed by the Court. The certificate must include supporting information showing a reasonable basis for the complex case designation being sought. Such supporting information may include, without limitation, a brief description of the following factors as they pertain to the particular action:

(1) Management of a large number of separately represented parties;
(2) Complexity of anticipated factual and/or legal issues;
(3) Numerous pretrial motions that will be time-consuming to resolve;
(4) Management of a large number of witnesses or a substantial amount of documentary evidence;
(5) Coordination with related actions pending in one or more courts in other counties, states or countries or in a federal court;
(6) Whether or not certification of a putative class action will in fact be pursued; and
(7) Substantial post-judgment judicial supervision.

A copy of the Certificate Re: Complex Case Designation must be served on all opposing parties. Any certificate filed by a plaintiff shall be served along with the initial service of copies of the Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 3.401), summons, and complaint in the action. Any certificate filed by a defendant shall be served together with the service of copies of the counter or joinder Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 3.402, subdivision (b) or (c)) and the initial first appearance pleading(s).

D. Noncomplex Counter-Designation.

If a Civil Case Cover Sheet designating an action as a complex case and the accompanying Certificate Re: Complex Case Designation has been filed and served and the Court has not previously declared the action to be a complex case, a defendant may file and serve no later than its first appearance a counter Civil Case Cover Sheet designating the action as not a complex case. Any defendant who files such a noncomplex counter-designation must also file and serve an accompanying Certificate Re: Complex Case Designation in the form prescribed by this Court and setting forth supporting information showing a reasonable basis for the noncomplex counter-designation being sought.

Once the Court has declared the action to be a complex case, any party seeking the Presiding Judge's decision that the action is not a complex case must file a noticed motion pursuant to Section H below.

E. Decision by Presiding Judge on Complex Case Designation; Early Status Conference.

If a Civil Case Cover Sheet designating an action as a complex case and the accompanying Certificate Re: Complex Case Designation have been filed and served, the Presiding Judge shall decide as soon as reasonably practicable, with or without a hearing, whether the action is a complex case and should be assigned to a single judge for all purposes.

Upon the filing of a Civil Case Cover Sheet designating an action as a complex case and the accompanying Certificate Re: Complex Case Designation, the Clerk of the Court shall set a status conference at which the Presiding Judge shall decide whether or not the action is a complex case. This status conference shall be held no later than (a) 60 days after the filing of a Civil Case Cover Sheet by a plaintiff (pursuant to California Rules of Court, Rule 3.401) or (b) 30 days after the filing of a counter Civil Case Cover Sheet by a defendant (pursuant to California Rules of Court, Rule 3.402, subdivision (a) or (b)), whichever date is earlier.

Alternatively, in his or her sole discretion, the Presiding Judge may make the decision on complex case designation and single assignment, without a status conference, based upon the filed Civil Case Cover Sheet and accompanying Certificate Re: Complex Case Designation alone.

F. Notice.

The party who seeks a complex case designation or a noncomplex counter-designation must give reasonable notice of the status conference to the opposing party or parties in the action even if they have not yet made a first appearance in the action. Such notice of the status conference shall be given in the same manner as is required for ex parte applications pursuant to California Rule of Court, Rule 379.

G. Representations to the Court.

By presenting to the Court a Certificate Re: Complex Case Designation, an attorney or unrepresented party is certifying to the best of that person's knowledge, information, and belief, formed after reasonable inquiry under the circumstances:

(1) That the complex case designation or noncomplex counter-designation is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) That the claims, defenses, or other legal contentions referenced therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) That the statement of supporting information relevant to the complex case designation or noncomplex counter-designation have evidentiary support or are believed, in good faith, likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) That there is a reasonable basis for that party's complex case designation or noncomplex counter-designation.

If, after notice and a reasonable opportunity to be heard, the Court determines that this subpart has been violated, the Court may impose an appropriate sanction upon the attorneys, law firms, or self-represented parties that have violated this subpart.

H. The Presiding Judge's Continuing Power.

With or without a hearing, the Presiding Judge may decide, on his or her own motion or on a noticed motion by any party, that a civil action is a complex case or that an action previously declared to be a complex case is not a complex case.

I. Pilot Program; Sunset Provision. (Repealed, effective 1/1/2007).

(Adopted, effective July 1, 2004)(Amended, effective July 1, 2005) (Amended, effective January 1, 2006)(Amended, effective January 1, 2007)

RULE NUMBERS 2.31 TO 2.35 ARE RESERVED

CHAPTER 8. ACCESS TO COURT RECORDS

Rule 2.36 Public Access and Privacy

Please reference. California Rules of Court, Rule 1.20.

(Adopted, effective January 1, 2008)

Rule 2.37 Public Access.

Exhibits or attachments to a document that are filed or lodged with or otherwise presented to the court, that are not otherwise marked as confidential or sealed, may be subject to public viewing and access either at the courthouse or electronically on-line (California Rules of Court, Rule 2.503, et seq.).

(Adopted, effective January 1, 2008)

Rule 2.38 Electronic Access.

Documents that are part of a court record are reasonably made available to the public electronically under the Court's Electronic Imaging program as permitted by California Rules of Court, Rules 2.500, et seq. Documents that are not properly protected by being marked confidential or sealed by court order may be subject to public access as discussed in Rule 2.38.

(Adopted, effective January 1, 2008)

ATTORNEY APPEARING Name: Firm Name: Tel No: Fax No: State Bar No. ATTORNEY FOR (Name):	DO NOT FILE WITH COURT **YOU MUST COMPLETELY FILL OUT ALL INFORMATION ON THIS FORM PRIOR TO SUBMITTING TO COURTCALL OR YOUR REQUEST CANNOT BE PROCESSED!**
COURT: SAN MATEO SUPERIOR COURT	
Case Name:	**CASE NUMBER:** **DEPARTMENT/JUDGE:** **DATE:** **TIME:** **HEARING:**
REQUEST FOR COURTCALL TELEPHONIC APPEARANCE	Our Tax ID#: 95-4568415

1. ______________________________(Name of specific attorney appearing telephonically) requests a CourtCall telephonic calendar appearance at the above referenced proceeding and agrees to provisions of the Rule/Order/Procedure Re: CourtCall Telephonic Appearances. I UNDERSTAND THAT I DIAL INTO THE CALL FIVE MINUTES BEFORE ITS SCHEDULED START TIME. **COURTCALL DOES NOT DIAL OUT TO ME.**

2. Not less than 5 Court days or 4:00 PM on the Court day prior to the hearing if the department posts tentative rulings, a copy of this document was served on all other parties and faxed to CourtCall, Telephonic Appearance Program Administrator at (310) 743-1850 OR (888) 88-FAXIN.

3. The non-refundable CourtCall Appearance Fee in the sum of $65.00 (plus additional fee of $35.00 if late filing is accepted) paid as follows:

__Check - (copy attached-write **CourtCall ID# on check** and faxed to CourtCall at (310) 743-1850 or (888) 88-FAXIN) payable to Telephonic Hearing Account and original mailed to CourtCall at 6383 Arizona Circle, Los Angeles, CA 90045, telephone (310) 342-0888 or (888) 88-COURT. **INDIVIDUALS REPRESENTING THEMSELVES MUST PAY BY CREDIT CARD!**

__Charged - to CourtCall Debit Account No.:______________________________

__Charged - to VISA, Mastercard or American Express:

To be completed only on the copy submitted to CourtCall, LLC:

Credit Card Number:______________________________Expiration Date:__________

To pay by credit card, the copy of this form submitted to CourtCall, LLC must be signed by the person whose credit card is to be charged and must be faxed to CourtCall at (310) 743-1850 or (888) 88-FAXIN with the above credit card information completed. The signature below constitutes authorization to charge the above referenced credit card.

______________________ ______________________
Type Name Signature

4. Request forms are processed within 24 hours of receipt. Call CourtCall if you do not receive a faxed Confirmation within 24 hours. WITHOUT A WRITTEN CONFIRMATION YOU ARE NOT ON THE COURTCALL CALENDAR AND MAY BE PRECLUDED FROM APPEARING TELEPHONICALLY! COURTCALL'S LIABILITY CONCERNING THIS TELEPHONIC APPEARANCE IS LIMITED TO THE FEE PAID TO COURTCALL. Matters continued at the time of the hearing require a new form and fee for the continued date. There are no refunds for matters voluntarily taken "off calendar" or canceled. To cancel a CourtCall Appearance fax a copy of your Confirmation marked "Canceled" to 310-743-1850.

5. ***MY SIGNATURE ON THIS DOCUMENT SERVES AS CONSENT FOR COURTCALL TO CONTINUE TO FAX (AT THE FAX NUMBER LISTED ABOVE UNDER "ATTORNEY OF RECORD") OR EMAIL NOTICES TO ME OR MY FIRM ADVISING OF UPCOMING APPEARANCES AND/OR OTHER OFFERINGS FROM COURTCALL UNTIL I OR MY FIRM ADVISES COURTCALL OTHERWISE.***

Date: ______________________ Signature: ______________________